In the Court of Appeal for/of Nunavut

Citation: R v Korgak, 2013 NUCA 09

Date: 20131010
Docket: 18-13-003 CAP
Registry: Iqaluit

Between:

Her Majesty the Queen

Appellant

- and -

Idlout Korgak

Respondent

The Court:

The Honourable Madam Justice Constance Hunt
The Honourable Mr. Justice Clifton O'Brien
The Honourable Mr. Justice Frans Slatter

Memorandum of Judgment
Delivered from the Bench

Appeal from the Sentence by
The Honourable Mr. Justice Foisey
Dated the 14th day of February, 2013
(Docket: 18-11-114)

Memorandum of Judgment
Delivered from the Bench

O'Brien J.A. (for the Court):

[1] The respondent, Idlout Korgak, killed his friend, Paul Kataluk, by driving over him with an ATV after a night of drinking. He pled guilty to manslaughter, leaving the scene of an accident and to driving while prohibited. The sentencing judge imposed a three-year sentence for manslaughter, six months consecutive for leaving the scene, and six months concurrent for driving while prohibited. The Crown appeals the three year sentence for manslaughter.

[2] The underlying facts are tragic. They were entered pursuant to an Agreed Statement of Facts. The respondent and his common law partner were drinking with the victim at the victim's home in Rankin Inlet in the early morning hours of July 9, 2011. The two men left the house and began to argue. Mr. Kataluk challenged the respondent to a fight, whereupon the respondent got in his ATV and drove at Mr. Kataluk, striking him and pushing his head and body into the wall of a shed. The respondent then returned home, where he went to bed. The next day he went fishing. In a subsequent statement of the police, the respondent acknowledged that at the time he drove off he was aware that he had struck Mr. Kataluk and had an idea that he might be dead.

[3] Mr. Kataluk died of head trauma, and the respondent was originally charged with second degree murder. Later he pled guilty to the lesser included offence of manslaughter. At the sentencing hearing, the Crown sought a sentence of five and a half years on the manslaughter charge. Defence counsel, while supplying the court with cases, made no submissions on length of sentence. Both Crown and defence agreed, however, that the respondent should receive enhanced credit for the nineteen months he had already spent in custody.

[4] The sentencing judge considered the parties' submissions, along with the authorities presented, and sentenced the respondent to a global sentence of three and a half years, less twenty eight and a half months credit for time spent in custody. Of this amount, three years constituted the sentence on the manslaughter charge. The Crown takes the position that the sentencing judge erred in principle by the three-year sentence, because it is not proportionate to the gravity of the offence and the culpability of the offender. In the Crown's view, this is a case of "near murder manslaughter", which would ordinarily demand a sentence of eight to twelve years, with the result that the three-year sentence was not a proper assessment of moral culpability and the need for denunciation and deterrence. The Crown also submits that while the court was obliged to take the *Gladue*/*Ipeelee* factors into account, the sentencing judge was also obliged to explain the relationship between the respondent's Inuit heritage and the proportionality principle, which he did not do. The Crown, therefore, seeks a five-year sentence on the manslaughter conviction.

[5] The sentencing judge's reasons are short. However, it is evident that he did not consider this to be a "near murder" case, which would have required a longer sentence. The judge appears to have accepted the respondent's statement that he "snapped" and that this was closer to an

unfortunate accident, fueled by alcohol abuse, the respondent's unfortunate upbringing in an alcoholic household, and the systemic problems of violence in his community. These are factors leading to a diminished level of moral culpability for the wrongful act. He also found the respondent was a good family man with a good employment record, and that he expressed legitimate remorse which indicated that when he returned to the community from prison he would be, in the judge's words, "undoubtedly a changed man." Aside from also emphasising the sentencing principle of rehabilitation, these were mitigating and personal circumstances the sentencing judge was entitled to take into account in arriving at an appropriate length of sentence.

[6] Moreover, we are constrained by the principle of deference. Even if members of this panel would have given a longer sentence if the respondent had been sentenced by them, an appellant court cannot vary a sentence order simply because it feels that a different order ought to have been made. An appellant court should not intervene unless it is shown that the sentence is demonstrably unfit, that the sentencing judge erred in principle, failed to consider a relevant factor, or overemphasized appropriate factors: *R v M(CA)*, [1996] 1 SCR 500. Accordingly, even though we view the sentence for the manslaughter to be at the very low end of the range, we will not interfere.

[7] We are not persuaded that the judge erred in principle or that the sentence is unfit in the circumstances of this case. It follows that the appeal must be dismissed.

Appeal heard on September 24, 2013

Memorandum filed at Iqaluit, Nunavut
this day of October, 2013

O'Brien J.A.

Appearances:

M.E. Bryant
for the Appellant

T.H. Boyd
for the Respondent